

11. (Original) The apparatus as in claim 9, wherein the memory storage is a look up table.

REMARKS

No new matter has been added.

The Office Action mailed January 6, 2006, has been received and reviewed. Claims 1 through 11 are currently pending in the application. Claims 1 through 11 stand rejected. Applicants propose to amend claim 3 and respectfully request reconsideration of the application as proposed to be amended herein.

35 U.S.C § 101 Non-Statutory Subject Matter

Claims 3 and 4 were rejected under 35 U.S.C. § 101 because the claims invention was directed to non-statutory subject matter. Claims 3 and 4 were directed to a signal that is not a physical embodiment. Applicants have amended claims 3 and 4.

35 U.S.C. § 102 Anticipation Rejections

Anticipation Rejection Based on Gagnon (EP 1 024 661 A2).

Claims 3 and 4 stand rejected under 35 U.S.C. § 102 as being anticipated by Gagnon (EP 1 024 661 A2), (hereinafter "Gagnon").

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." M.P.E.P. § 2131 (Aug. 2001) (*quoting Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987)). "The identical invention must be shown in as complete detail as is contained in the . . . claim." *Id.* (*quoting Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1051, 1053 (Fed. Cir. 1987)). In addition, "the reference must be enabling and describe the applicant's invention sufficiently to have placed it in possession of a person of ordinary skill in the field of the invention." *In re Paulsen*, 30 F.3d 1475, 1479, 31 USPQ2d 1671, 1673 (Fed. Cir. 1994).

Applicants respectfully submit that claims 3 and 4 are not anticipated by Gagnon because the reference does not disclose all the claim limitations of the presently claimed invention as set forth above.

Attorney Docket No.: 010438
Customer No.: 23696

Applicants submit that the Gagnon reference does not disclose the claim limitations calling for “a session description protocol message (SDP message) **interleaved with the broadcast session**, wherein the SDP message **provides information for processing the broadcast session**” [Independent Claim 3].

Claims 3 and 4

The Office Action alleges:

Regarding claim 3, Gagnon teaches a communication signal transmitted on a carrier wave (i.e., broadcasting video over the air, **col. 10, lines 45-55**), the signal comprising: a broadcast session portion (i.e., broadcasting video, **col. 6, lines 25-39, col. 29, line 39 to col. 31, lines 57**); wherein the SDP provides information for processing the broadcast session (i.e., providing information including actions to be taken on receipt of the information, **col. 29, line 39 to col. 30, lines 57**).

Gagnon further teaches a session description protocol message (SDP message) interleaved with the broadcast session portion (i.e., actions to be taken on receipt of the information interleaved with the standard field of the SDP protocol that includes various types of information such as video/audio signals, session identifier, the name of the SDP session, list of Internet Web Pages, **col. 29, line 39 to col. 30, line 57**).

Regarding claim 4, Gagnon further teaches wherein the signal is transmitted via a broadcast transmission channel (**col. 8, line 53 to col. 9, line 11**).

Applicants respectfully disagree with the Office Actions characterization of the Gagnon reference. A close reading of the specific Gagnon reference citations from the Office Action reveals teachings very different from Applicants' invention as claimed. Specifically, the Gagnon reference recites:

A preferred broadcasting system is the satellite-based system utilized by the DIRECTV[®] broadcast service. Such embodiments . . . employ a satellite receiving antenna to acquire real-time video broadcasts

and **periodic data broadcasts** used to construct a program guide display. (Col. 11, lines 6-12; emphasis added).

In operation, the programming sources 108 receive video and audio programming from a number of sources, . . . The received programming signals, along with data signals from the **control data source 110** [note- the Gagnon reference provides no further enabling disclosure on the function or purpose of these signals], the **data service source 112** [note- again, the Gagnon reference provides no further enabling disclosure on the function or purpose of these signals], and the program guide data sources 114, are sent to the video/audio/data encoding system 116 where they are digitally encoded into information data streams that are multiplexed into a packetized data stream or bit stream using a number of conventional algorithms. Each data packet within the packetized data stream includes a header that identifies the contents of the data packet and a service channel identifier (SCID) that identifies the data packet. (Col 11, line 46 through col. 12, line 2; emphasis added).

. . . The PPG [pictographic program guide] . . . is assembled using two basic types of external data: (1) real-time broadcast data (e.g. streaming data), and (2) file data (i.e., data that is periodically downloaded and stored). (Col. 12, lines 42-46).

In one embodiment of the present invention, the transmission station transmits to the receiver stations program selection data/information that is used at each receiver station to construct an electronic program guide and associated display formant and content (i.e., a user interface) that, in contrast to known video-based and/or text/video/icon-based electronic program guides, significantly enhances how the program guide can be displayed, how much information can be incorporated into the guide, and how quickly and efficiently a user can move through the guide. The viewable display format, according to the present invention, incorporates moving picture video, still pictures, text, link to external data sources,

graphics and other features that facilitate the selection of various programs and services. (Col. 6, lines 25-39).

Applicants respectfully submit that Gagnon discloses no such information that is “a session description protocol message (SDP message) interleaved with the broadcast session”, “wherein the . . . session description protocol message provides information for processing the broadcast session” as claimed by Applicants. In distinct contrast, Gagnon transmits information that is used to build a structure independent of the processing of the broadcasting session, namely Gagnon’s program guide. The program guide includes clips of multiple broadcast channels as well as the structure to present the programming choices. In the Gagnon reference, the transmitted programming guide information has no bearing upon the processing of any of the broadcast channels but is merely provided as a completely independent source of information. A user makes a selection from the program guide and then begins receiving the broadcast. In short, the transmission or non-transmission of Gagnon’s program guide information has no bearing upon processing of any broadcasting session. Furthermore, since the program guide is independent of actual broadcast session it is not possible for Gagnon to provide “a session description protocol message (SDP message) interleaved with the broadcast session”.

The Office Actions’ citation to corresponding teachings within the Gagnon reference is also unsupported and non-enabling. Specifically, the Office Action cites to the Gagnon reference, col. 29, line 39 to col. 30, line 57 for support, however, the alleged Gagnon teaching is unsupported by the Gagnon reference.

At the Office Action’s citation, the Gagnon reference explicitly states:

. . . One [] method that allows the PPG [pictographic program guide] [] to efficiently find and process information for presentation to a user are “session description protocol plus” (SDP+) records. (Col. 29, lines 31-34).

An SDP+ record is an announcement mechanism that includes a number of fields, which are assembled into a single record or file . . . (Col. 29, lines 39-41).

While the Gagnon reference continues to expound upon fields and information content of the SDP+ record (e.g., start and end times of the broadcast, the repeat times of

the broadcast, addresses of Internet web pages that provide additional information regarding the specific program item, etc.), the SDP+ record clearly further enhances the **independent** program guide of Gagnon rather than providing information that is "interleaved with the broadcast session", "wherein the . . . information provides **information for processing the broadcast session**" as claimed by Applicants. The guide of Gagnon is separate from the actual broadcast of the selected broadcast.

The Examiner states in "Response to Arguments" that "It is clear that a broadcast session is read on Gagnon video and audio programming are packetized to broadcast to receivers, see paragraph 36 and paragraphs 83-88". Paragraph 36 reads:

To inform the user of when and on what IP address the large file mentioned above will be broadcast, session description protocol plus (SDP+) records are periodically broadcast by the transmission station 102. . . SDP + records are processed by the receiver station 106 to produce a schedule of all data service information that will be broadcast by the transmission station 102. Additionally, the SDP + records are used by the PC 128 to build PPG pages using selected information resident within the PC system (e.g., a basic page template) and selected dynamic data that is received from the satellite or an Internet connection. When the user launches the interface into another state or page, the PPG builds the destination page as instructed by the SDP + records and displays it on the user's PC system monitor 130. . .

Applicants respectfully submit that a providing a program guide to aid in broadcast session selection does not disclose "a session description protocol message (SDP message) interleaved with the broadcast session". . As noted above, Gagnon teaches packetized data used to provide a programming guide and does not deliver an actual broadcast session. The additional citation to paragraphs 83-88 expounds further on the use of SDP records to create the program guide. Neither citation indicates that Gagnon provides anything but a program guide.

Applicants submit that the Gagnon reference does not disclose all of the limitations of Applicants' invention as claimed, this reference cannot anticipate Applicants' invention

as claimed under 35 U.S.C. § 102. Therefore, Applicants respectfully request that the rejections be withdrawn.

Claim 4 is allowable as depending directly from allowable independent claim 3.

35 U.S.C. § 103(a) Obviousness Rejections

Obviousness Rejection Based on Gagnon (EP 1 024 661 A2) and Further in View of U.S. Patent No. 5,673,259 to Quick, Jr.

Claims 1, 2, and 5-11 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Gagnon (EP 1 024 661 A2), and further in view of Quick, Jr. (U.S. Patent No. 5,673,259 hereinafter "Quick"). Applicants respectfully traverse this rejection, as hereinafter set forth.

M.P.E.P. 706.02(j) sets forth the standard for a Section 103(a) rejection:

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or combine reference teachings. Second, there must be a reasonable expectation of success. Finally, **the prior art reference (or references when combined) must teach or suggest all the claim limitations.** The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). (Emphasis added).

The 35 U.S.C. § 103(a) obviousness rejections of claims 1, 2 and 5-11 are improper because the elements for a *prima facie* case of obviousness are not met. Specifically, the rejection fails to meet the first criterion that the prior art reference must teach or suggest all the claim limitations. Applicants submit that any proposed combination of the Gagnon reference in view of the Quick reference does not and cannot establish a *prima facie* case of obviousness under 35 U.S.C. § 103 regarding the presently claimed invention of independent claims 1, 5, 7, and claims 2, 6, 8-11, depending therefrom because, at the very

least, the cited prior art does not teach or suggest all the claim limitations of the presently claimed invention as set forth hereinabove.

Applicants submit that the proposed combination of the Gagnon reference and Quick reference does not teach or suggest the claim limitations calling for **"information interleaved with the broadcast session on the broadcast transmission channel, wherein the . . . information provides information for processing the broadcast channel"** [Independent Claim 1] and **"message interleaved with the broadcast session . . . , wherein the . . . message provides information for processing the broadcast session"** [Independent Claims 5 and 7].

Claims 1 and 2

The Office Action alleges:

Regarding claim 1, Gagnon teaches in a wireless communication system supporting a broadcast service . . . , a method comprising: transmitting a broadcast session on a broadcast transmission channel (. . . **col. 10, lines 45 to col. 11, line 17**).

Gagnon further teaches "transmitting broadcast overhead information" interleaved with the broadcast session on the broadcast transmission channel (. . . **col. 11, line 46 to col. 12, line 26**), wherein the transmission of packet data, the packetized data stream includes a header that identifies the contents of data packet (audio/video programming)(i.e., the header that identifies the content is included in the broadcast signal).

Gagnon does not explicitly teach wherein the broadcast overhead information provides information for processing the broadcast session.

However, the preceding limitation is known in the art of communications. Quick Jr. teaches broadcasting system overhead information wherein the information is interleaved with paging and control message on a broadcast channel; the overhead information is sent by the base station to a control parameter, and a process to process message and switch from one channel to another base on bandwidth demand (**col. 4, lines 39-61, col. 11, lines 10-20, and col. 15, lines 26-44**). . . . (Office Action, pp. 3-4).

Applicants respectfully disagree with the Office Actions characterization of the Gagnon reference, as noted above.

Applicants respectfully submit that since both the Gagnon reference and the Quick Jr. reference are silent regarding information that is "interleaved with the broadcast session", "wherein the . . . information provides **information for processing the broadcast session**" as claimed by Applicants, the cited references, namely the Gagnon reference in view of the Quick reference, do not and cannot establish a *prima facie* case of obviousness under 35 U.S.C. § 103 regarding the presently claimed invention of independent claim 1 and claim 2 depending therefrom because, at the very least, the cited prior art does not teach or suggest all the claim limitations of the presently claimed invention as set forth hereinabove.

Applicants further submit that Gagnon teaches away from Applicants' invention. As discussed above, Gagnon teaches providing a program guide to assist users in selecting broadcasts to view. Because Gagnon's program guide is independent of the broadcast it is not possible for Gagnon to teach the limitation "information interleaved with the broadcast session" and in fact teaches away from this limitation found in Applicants' claim 1.

Quick Jr. teaches a method and system for communicating a data packet. (Abstract)
At the cited portion Quick Jr. teaches:

. . . in a digital communication system having a broadcast channel for communicating system information and an access channel for making access requests, the system information including paging messages, the digital communication system including a plurality of transceivers each having a specific long code, the present invention is a system for communicating a digital data packet. In the system of the present invention, a communicating transceiver from among the plurality of transceivers initializes a packet service request, requests a searcher reservation on the access channel, and sends the digital data packet over a random access channel using the specific long code corresponding to the communicating transceiver to obtain a coded digital data packet. (col. 4, lines 39-61)

The system described by Quick Jr. utilizes the broadcast channels to transmit information for mobile transceivers to access the communication network. This information is not comparable to the broadcast transmissions of Applicants' invention. Furthermore, Quick Jr. teaches away from Applicants' invention. Using an SDP message as in Applicants' invention allows the mobile terminal to determine settings for receiving a broadcast without setting up a packet data call. The mobile terminal can receive the SDP description needed to receive the broadcast directly from the content server since the SDP message is interleaved with the broadcast content. In direct contrast, Quick Jr. teaches and suggests a method for efficient data transmission in a packet data system.

In addition, Applicants respectfully submit that it would not be obvious to combine Gagnon and Quick. Gagnon discloses and teaches a program guide while Quick teaches using broadcast channels to transmit information to allow mobile stations to access a communication network. Combining Gagnon and Quick would result in a program guide to system access broadcast messages to allow mobile stations to access a communication system. The broadcast messages of Quick are not equivalent to the broadcast session Applicants' claim 1 is directed toward.

Applicants submit that since neither the Gagnon reference or the Quick Jr. reference, either individually or in any proper combination, teach or suggest all of the limitations of Applicants' invention as claimed, these references cannot render obvious Applicants' invention as claimed under 35 U.S.C. § 103. Therefore, Applicants respectfully request that the rejections be withdrawn.

Independent claims 5 and 7 are allowable for the same reasons given above for claim 1.

Claims 5, 6 and 8-11

The Office Action similarly alleges teachings by the Gagnon reference and the Quick Jr. reference as described above. Applicants respectfully disagree with the Office Action's characterization of the Gagnon reference and the Quick Jr. reference.

Applicants herein sustain the above proffered arguments, namely that Gagnon discloses no such information that is "interleaved with the broadcast session", "wherein the

. . . information provides **information for processing the broadcast session**" as claimed by Applicants in independent claims 5, 7 and claims 6, 8-11 depending therefrom.

Furthermore, since both the Gagnon reference and the Quick Jr. reference are silent regarding information that is "interleaved with the broadcast session", "wherein the . . . information provides **information for processing the broadcast session**" as claimed by Applicants, the cited references, namely the Gagnon reference in view of the Quick Jr. reference, do not and cannot establish a *prima facie* case of obviousness under 35 U.S.C. § 103 regarding the presently claimed invention of independent claims 5, 7 and claims 5, 6, and 8-11 depending therefrom.

Applicants submit that since neither the Gagnon reference nor the Quick Jr. reference, either individually or in any proper combination, teach or suggest all of the limitations of Applicants' invention as claimed, these references cannot render obvious Applicants' invention as claimed under 35 U.S.C. § 103. Therefore, Applicants respectfully request that the rejections be withdrawn.

Double Patenting Rejection

Claims 1-11 were provisionally rejected on the ground of nonstatutory double patenting over claims 1-11 of copending Application No. 10/333,141. Applicants believe that the Application No. should be 10/033,141 therefore, Applicants have included a terminal disclaimer with this amendment to overcome this rejection.

Claim 1 was rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 6, and 11 of U.S. Patent 6,909,702. Applicants have included a terminal disclaimer with this amendment to overcome this rejection.

ENTRY OF AMENDMENTS

The proposed amendment to claim 3 above should be entered by the Examiner because the amendments are supported by the as-filed specification and drawings and do not add any new matter to the application. Further, the amendments do not raise new issues or require a further search.

CONCLUSION

Claims 1-11 are believed to be in condition for allowance, and an early notice thereof is respectfully solicited. Should the Examiner determine that additional issues remain which might be resolved by a telephone conference, he is respectfully invited to contact Applicants' undersigned attorney.

Respectfully submitted,

Dated: April 6, 2006

By: Roberta A. Young
Roberta A. Young, Reg. No. 53,813
(858) 658-5803